IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

ePLUS INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:09CV620 (REP)
	)	
LAWSON SOFTWARE, INC.,	)	
	)	
	)	
Defendant.	)	

DEFENDANT LAWSON SOFTWARE, INC'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO SERVE EXPEDITED DISCOVERY

Plaintiff *e*Plus's Inc.'s dissatisfaction with the Court's briefing schedule does not warrant expedited discovery. The Court already advised the parties that it did not believe further discovery was necessary on the issues raised by *e*Plus's motion and provided a schedule for the parties to supplement their discovery regarding injunctive relief. Moreover, *e*Plus fails to explain why expedited discovery is necessary at this time, and *e*Plus ignores the local rule requiring that the parties meet and confer prior to filing a discovery motion and further. Accordingly, *e*Plus's motion should be denied.

At trial, the Court set the schedule for disclosing the information relevant to the propriety of injunctive relief. The Court noted that it "[did not] envision any need for any further discovery on the issue of . . . [an] injunction." (Ex. A, Trial Tr. 3414: 3-7, Jan. 27, 2011.) The Court did allow the parties to supplement discovery by setting "a schedule for you all disclosing that information to each other, what, basically, you're going to put on." The Court directed *e*Plus to provide its evidentiary disclosures on February 7, 2011; Lawson to provide its evidentiary

disclosures on February 14, 2011; and *e*Plus to provide its rebuttal evidentiary disclosures on February 21, 2011. (*Id.*; Trial Tr. 3417:19 – 3418:4.)

The Court further ordered as follows:

> I'll hear you on March 3rd beginning at 9:30 in the morning. I regard that each of you in this instance, when you file what I have dictated that you file, directed that you file, will be satisfying **your obligations to update your discovery** on the issue of injunctive relief because injunctive relief has been effectively severed from the case by virtue of the pretrial proceedings. I think you will have satisfied your Rule 26 updates when you file these things, and that's what I'm looking for.

(*Id.*; Trial Tr. 3419: 11-19 (emphasis added).)

Given the Court's clear and explicit direction as to timing and supplementation, *e*Plus's motion should be denied.

Further, *e*Plus seeks to force Lawson into providing supplemental information on February 9, but wholly fails to articulate any actual need for receiving supplemental information prior to the February 14, 2011 deadline provided by the Court. In its memorandum, *e*Plus complains yet again about Lawson's responses to Interrogatory No. 24. Yet, Lawson already supplemented its response twice after the Court's March 30, 2010 order. ePlus never objected to the adequacy of Lawson's supplemental discovery responses and failed to move to compel further information in response to Interrogatory No. 24 prior to the close of discovery. Instead, *e*Plus attempted to ambush Lawson at trial by asserting for the first time in front of the jury that Lawson had not complied with this Court's March 30, 2010 order. To the extent that Lawson has information to supplement its response, it will timely do so in full compliance with this Court's order by no later than February 14, 2011. The Court has already provided *e*Plus a week to review and analyze Lawson's production before its disclosures and reply is due on February

21, 2011. Other than *e*Plus's presumed desire for a "five day sneak preview" of Lawson's evidentiary case, *e*Plus fails to articulate why it needs additional time for rebuttal.

Lastly, *e*Plus's motion was filed in violation of Local Civil Rule 37(E), which provides that "[n]o motion concerning discovery matters may be filed until counsel shall have conferred in person or by telephone to explore with opposing counsel the possibility of resolving the discovery matters in controversy," and that "[t]he Court will not consider any motion concerning discovery matters unless the motion is accompanied by a statement of counsel that a good faith effort has been made between counsel to resolve the discovery matters at issue." Notably, *e*Plus's motion lacks any such statement, because it made no attempt to contact Lawson's counsel before serving its additional discovery and filing its motion. *e*Plus's approach in filing this premature motion is a classic case of "ready, shoot, aim," warranting denial of its motion.

*e*Plus's belief that the Court's briefing and supplementation schedule is inadequate does not warrant expedited discovery. The Court's clear directives regarding the timing of supplemental disclosures provide an orderly and fair way of supplementing the evidence of record. *e*Plus should not receive additional time to review and analyze Lawson's evidentiary disclosures as *e*Plus already gets the first and last word prior to the evidentiary hearing. Accordingly, Lawson respectfully requests that *e*Plus's motion for expedited discovery be denied.

LAWSON SOFTWARE, INC.

By /s/
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CERTIFICATE OF SERVICE

I certify that on this 4th day of February, 2011, a true copy of the foregoing will be filed electronically with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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